IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1171 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 - 5 No

KANUBEN OTTAMCHAND MEHTA

Versus

G L BHAGAT ,IAS

Appearance:

MR YS MANKAD for Petitioner

MRS. S.D. TALATI, A.G.P. for Respondent No. 1

MR AVINASH K MANKAD for Respondent No. 2

SERVED for Respondent No. 3

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 26/12/97

ORAL JUDGEMENT

The petitioner was granted the building permission by Bhuj Municipality. That was challenged by the respondent No. 2 before the Collector under Section 258 of the Gujarat Municipalities Act. The Collector by his order dated 16.12.1985 Annexure-E to the petition directed status quo to be maintained pending disposal of

the proceeding and also stayed the operation of building permission.

Respondent No. 2 had contended that the building permission granted by the municipality was illegal. In this petition the learned counsel for the petitioner that the Collector had no jurisdiction to initiate any proceedings under Section 258 of the Act in the facts and circumstances of the case.

On behalf of respondent No. 2 it is submitted that the petition is premature and it is open to the petitioner to make submission before the Collector.

Both the sides referred to the decision of the Division Bench of this court in the case of RAGHAVBHAI VS. AMRELI NAGARPALIKA reported in 1994(2) GLR 1117. Mr. Avinash Mankad for respondent No. 2 submitted that the Division Bench held that the Collector could decide about the legality and validity of the resolution granting building permission and the Collector could make such declaration and he has referred to observation in para 10 of the judgement. However, that observation is on assumption ("even if it is assumed that the Collector could") that the Collector had the power under Section 258 in the facts of the case.

In the present case, there is nothing which the Municipality was required to do after having granted the permission. In para 16 of the judgement the Division Bench has summarised the settled legal position and held that when the municipality has done everything that was required to be done in pursuance of its resolution and nothing further was required to be done by the municipality, there was nothing to be stayed or suspended and the Collector could not have exercised power under Section 258 of the Act and therefore the order of Collector was set aside.

The Division Bench has also refrained from going into the merits and discussing the merits because either party may wish to take to ascertain their claim.

In the present case also, the Collector could not have gone into the merits nor can the High Court go into the merits in these proceedings. The respondent No. 2 if he has any grievance or any civil rights, he should have his remedy in Civil Court and not before the Collector who cannot finally decide the rights of private parties.

Hence this petition is allowed. Rule is made absolute by setting aside the impugned order of the Collector at Annexure-E dated 16.12.1985 and the notice dated 19.12.1985. Interim relief, if any, stands vacated.

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